Supreme Court, U.S.
FILED
DEC 24 1997
CLERK

(3)

No. 97-643

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

SETH P. WAXMAN
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

6 pp

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-643

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM FOR THE UNITED STATES

Although respondent defends the judgment of the court of appeals, she acknowledges that the court's decision in this case conflicts with decisions of at least three other circuits. See Br. in Opp. 2-3 & nn.2-4.[1] That conflict warrants this Court's resolution. In

[1] We also believe that the court of appeals' decision in this case conflicts with the Fourth Circuit's decision in *United States* v. *Heaps*, 39 F.3d 479, 482 (1994). See Pet. 9-10, 12. Respondent correctly observes (see Br. in Opp. 2 n.1) that the defendant in *Heaps* moved for a change of venue pursuant to Federal Rule of Criminal Procedure 21(b) (rather than to dismiss the indictment, or the money laundering counts in it, on the basis of improper venue). Respondent's assertion (Br. in Opp. 2 n.1), however, that venue in *Heaps* was conceded to be proper in the Eastern District of Virginia, where the defendant was tried, is incorrect. The defendant in *Heaps* "asserted that since all activity conducted by him in furtherance of the crimes charged occurred in New York, he should not have had to stand trial in the Eastern District of Virginia." 39 F.3d at

any event, respondent's arguments on the merits are unpersuasive.

1. Respondent contends (see Br. in Opp. 9-10, 13-14) that venue in a money laundering prosecution may not be based on the location where the tainted funds were derived because the money laundering offense is a separate and distinct crime from the "specified unlawful activity" that generated the illicit proceeds. In certain respects, money laundering is an offense distinct from the underlying "specified unlawful activity." Respondent could, for example, be convicted of money laundering without proof that she personally assisted in the drug trafficking activities that produced the funds in question. And even where a defendant *is* convicted of the predicate "specified unlawful activity," a conviction for money laundering requires proof of additional elements beyond those necessary for conviction of the predicate crime. But money laundering does require proof of the specified unlawful activity that generated the funds.

As the petition explains (see Pet. 5, 9, 12, 14), the money laundering offenses described in 18 U.S.C. 1956(a)(1)(B)(ii) and 1957(a) contain an element that the funds in question were the product of "specified unlawful activity," and that the defendant knew the

---

482. Because the money laundering counts were predicated on a wire transfer of funds from Washington, D.C., to New York, see *id.* at 482, 483, the propriety of venue in the Eastern District of Virginia necessarily rested on the proposition that "venue for a money laundering case is proper in any district in which the specified unlawful activity occurs," *id.* at 482 (citing *United States* v. *Beddow*, 957 F.2d 1330, 1336 (6th Cir. 1992)). That proposition was, in turn, essential to the *Heaps* court's holding (see *id.* at 482-483) that the district court had not abused its discretion in denying the defendant's motion for change of venue.

funds to have been unlawfully derived. Respondent contends that "[t]he alleged conduct which constituted the crime began and ended in a Florida bank," Br. in Opp. 11; see also Pet. App. 4a (stating that respondent was indicted "for transactions which began, continued, and were completed only in Florida"). The banking transactions in which respondent engaged, however, would not have violated Section 1956(a)(1)(B)(ii) or 1957(a) if the funds in question had been acquired through lawful means. The crime of money laundering is therefore properly regarded, for purposes of the relevant constitutional and statutory venue provisions, as having been committed in part in the district where the tainted funds were generated. See, *e.g.*, *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916) ("where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done").

2. Respondent contends (Br. in Opp. 10-13) that *United States* v. *Anderson*, 328 U.S. 699 (1946), compels rejection of the government's position. She relies in particular on the *Anderson* Court's statement that the determination of proper venue depends in part on "what acts of the defendant constituted the violation." *Id.* at 705. The Court in *Anderson* had no occasion, however, to address the situation in which a defendant's liability under a criminal statute may depend in part upon the commission of unlawful acts by any person, including a person other than the defendant. *Anderson* cannot plausibly be read to establish a per se rule that criminal prosecutions must *always* be brought in a district where the defendant himself committed an element of the charged offense. As we note in the petition (see Pet. 13), for example, it is well established that venue in a

conspiracy prosecution under 18 U.S.C. 371 is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators.

3. Finally, respondent contends (Br. in Opp. 14-16) that the determination of proper venue in a criminal prosecution implicates important issues of public policy. The dual constitutional provisions governing venue in federal criminal prosecutions (see U.S. Const. Art. III, § 2, Cl. 3; Amend. VI) do attest to the significant values underlying the venue requirement. As this Court has recognized, however, "the geography prescribed is the district or districts within which the offense is committed," which "may or may not be the place where the defendant resides." *Anderson*, 328 U.S. at 705. Accord, *e.g.*, *Armour Packing Co.* v. *United States*, 209 U.S. 56, 76 (1908) ("The constitutional requirement is as to the locality of the offense and not the personal presence of the offender."). The possibility that a criminal defendant will be "forced to defend herself far from home" (Br. in Opp. 15) is thus inherent in the constitutional scheme.

4. The Court's resolution of this case is not only warranted to resolve a circuit conflict involving the money laundering statutes, but also to clarify principles governing venue in prosecutions brought under other federal criminal statutes. For example, a circuit conflict currently exists with respect to proper venue in prosecutions under 18 U.S.C. 924(c)(1), which imposes criminal penalties on any person who uses or carries a firearm during and in relation to a crime of violence or drug trafficking crime. Compare *United States* v. *Pomranz*, 43 F.3d 156, 159-162 (5th Cir.) (venue in a Section 924(c)(1) prosecution is

proper in any district where the underlying drug or violent crime occurred, even if the defendant did not use or carry a firearm in that district), cert. denied, 116 S. Ct. 513 (1995), with *United States* v. *Palma-Ruedas*, 121 F.3d 841, 847-851 (3d Cir. 1997) (venue for Section 924(c)(1) count was not proper in New Jersey because the defendant did not use or carry the firearm there, notwithstanding the fact that venue was proper in New Jersey for the predicate kidnapping charges).[2]

The government's position in the instant case rests on the proposition that, in the absence of statutory language specifying a contrary rule, venue in a federal criminal prosecution is generally proper in any district where an essential element of the criminal activity in the offense was committed. That position, if adopted by this Court, would illuminate and clarify the determination of venue with respect to many comound federal crimes. Given the importance of such offenses in the federal system (*e.g.*, Continuing Criminal Enterprise, 21 U.S.C. 848; RICO, 18 U.S.C. 1962), the venue question in this case should be resolved by this Court.

* * * * *

For the reasons stated above, and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DECEMBER 1997

---

[2] The government is currently considering whether to file a petition for a writ of certiorari in *Palma-Ruedas*.